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No. 08-426

Supreme Court, U.S.
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In The

Supreme Court of the United States

BONNIE HARBUCK,

Petitioner,

v.

HOUSTON COUNTY,
GOVERNOR'S ESTATE, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

PETITIONER'S REPLY BRIEF

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RESTATEMENT OF QUESTION PRESENTED

How much money must change hands in financial dealings to constitute a conflict of interest or impartiality of a Judge or Special Master to warrant recusal under the Fourteenth Amendment when the Special Master sold property to the Developer for a profit prior to Petitioner's Quiet Title Action?

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CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999 1

BRIEF REPLY BY PETITIONER TO RESPONDENT

This case should be co-joined with *08-22 Caperton, Et. Al. V.A.T. Massey Coal Co., Et. Al.*, 2008 WL 918444. The question presented is parallel to Caperton's question. Caperton: Does failure to recuse violate the due process clause of the Fourteenth Amendment? Harbuck: How much money must change hands in financial dealings to constitute a conflict of interest to warrant recusal under the Fourteenth Amendment? These cases should be combined. *08-22 Caperton, Et. Al. V.A.T. Massey Coal Co., Et. Al.*, 2008 WL 918444, petition was granted on November 14, 2008.

Contrary to the Respondents assertions, Harbuck's question is not sarcastic or insulting. The Georgia Supreme Court stated that bias must be "of such a nature of intensity that it would impede the exercise of impartial judgment." *Harbuck v. Houston County*, 284 Ga. 4 (2008), quoting *Ware v. Henry County Water and Sewage Authority*, 258 Ga. App. 778 (2002).

States and Federal Circuits all over the country diverge on what is or is not a conflict interest. CNN reported the Community Rights Counsel Study in 1999, finding that eight federal judges had a conflict of interest. CNN, Charles Bierbauer, Study: Eight Federal Judges Had Conflict of Interest, September 13, 1999. The Judges ranged from the D.C. Circuit, First Circuit, Third Circuit, Sixth Circuit, Seventh

Circuit, Eighth Circuit, and Ninth Circuit. This study was more than nine years ago.

The problem is widespread and not just limited to Georgia in Harbuck's case, or West Virginia in the Caperton case. Failure to ensure an impartial judiciary violates the Fourteenth Amendment and also worse than that, erodes the ever declining confidence in the judicial system.

Ask anyone. The general public does not trust lawyers or judges. "The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired." Commentary, Canon 2A, Federal Code of Conduct for United States Judges. There should not be some heightened test where bias is of such a nature that would impede impartiality, as Georgia suggests. If the general public who is not a lawyer or a judge would think that impropriety would exist, then that should be our guide.

Being a lawyer or a judge used to be the highest calling. Yet now, our reputations are so sullied in the legal community by appearances of impropriety and money changing hands, that our professions are no longer noble or admired. How much money is too much money to trigger a conflict of interest?

It is a fair, honest question, whose time is ripe for review.

CONCLUSION

The petition for a writ of certiorari should be granted and combined with 08-22 *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 2008 WL 918444.

Respectfully submitted,

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